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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/774,161	02/06/2004	D. Ryan Breese	88-2066A	7273

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EXAMINER	
VARGOT, MATHIEU D	
ART UNIT	PAPER NUMBER
1791	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/774,161	BREESE, D. RYAN	
	Examiner	Art Unit	
	Mathieu D. Vargot	1791	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *31 March 2008*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-19* is/are pending in the application.

4a) Of the above claim(s) *16-19* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-15* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

1.The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1, 2, 4, 5, 14 and 15 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Bowling et al (see col. 1, lines 39-40 and Examples 1 and 3; col. 3, lines 20-23; col. 5, lines 50-52)

The applied reference discloses drawing or orienting at a ratio of 2-25 (col. 5, lines 50-52) a HDPE (col. 3, lines 20-23) of suitable density that has been processed as a blown film (col. 1, lines 39-40 and Examples 1 and 3). It is submitted that the orienting ratio of 2-25 is for that of the machine direction since the disclosure at column 5 is dealing with roller orientation that would primarily extend the film in the longitudinal direction. Also, form a fair reading of the reference, it would appear that if transverse stretching is to occur, it would be performed at some ratio that is the same or different than the machine direction stretching—see col. 6, lines 17-35. Given that Bowling et al discloses

the instant steps, it is submitted inherent that the film made therein has the instant 1% secant moduli in the machine and transverse directions as set forth in instant claims 1, 2 and 15. Alternatively, if the claims are not anticipated, then they are obvious over Bowling et al in that it would have been obvious to one of ordinary skill in the art to pick and choose a suitable draw-down ration of greater than 10:1 or 11:1, given that the reference discloses ratios of up to 25:1. The instant secant moduli would have been obviously attained in such processing. Note that the exact stretching ratio and the secant modulus are considered to be a result effective variables that are clearly dependent on each other and would have been readily determined and/or chosen through routine experimentation dependent on the exact strength property desired for the final film.

2.Claims 3 and 6-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bowling et al.

Bowling et al discloses the basic claimed process as set forth in paragraph 1, supra, the reference essentially failing to teach the instant density range up to .970 and the instant molecular weights. Given that the density range of .930-.965 of Bowling et al, it is submitted that the range recited in instant claim 3 is obvious thereover, since there is a substantial overlap. The exact molecular weight of the HDPE is submitted to have been within the skill level of the art, the instant molecular weight ranges being generally well known in the art and dependent on polymerizing conditions, as is also quite well known—ie, it is certainly within the skill level of the art to make a HDPE with the instant molecular weight.

3.Claims 1-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Duckwall, Jr et al (see col. 2, lines 17-21 and lines 41-45; col. 3, line 43 through col. 4, line 34; col. 5, line 49).

Duckwall, Jr et al discloses the basic claimed process of machine orienting a HDPE blown film at a draw-down ratio of from "about 2 to about 10" (see col. 5, line 49). It is respectfully submitted that the upper limit of this ratio would render the instant ratios of "greater than 10:1" (instant claim 1) and "11:1 or greater" (instant claim 14) as obvious, since there is very little difference between a stretching rate of 10 or 11 and one slightly less than 10 as disclosed in the reference. Given the closeness of the stretching ratios, it is submitted that the instant 1% secant moduli would have been obvious over Duckwall, Jr et al. Again, it is submitted that the exact stretching rate and the secant modulus are result effective variables that would have been readily determined through routine experimentation dependent on the exact strength characteristics desired for the film. The applied reference discloses a density range of .941-,970, thereby encompassing the instant density ranges. While the molecular weight of the HDPE is a higher than that set forth in instant claims 6-13, the exact molecular weight would have been within the skill level of the art dependent on polymerization conditions—again, see paragraph 2, supra.

4.The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140

F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-15 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-16 of copending Application No. 10/879,763. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of copending application -763 and the instant claims set forth essentially similar methods of orienting a HDPE film at a draw-down ratio of greater than or equal to 10:1 or 11:1, the chief difference being the exact property achieved using such stretching. Given that the processing is similar, it would be expected that the exact film properties resulting therefrom would have also been similar. It would have been obvious to have performed the processing of copending application -763 on a blown film, as that is clearly the intent of the claims recited therein.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

5.Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Applicant's comments with respect to the instant processing are persuasive and hence the previous rejection has been dropped. However, new art has been found that renders the instant claims anticipated or obvious thereover for reasons set forth supra. Also, a double patenting rejection ahs been made with respect to copending application 10/879,763.

6.Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mathieu D. Vargot whose telephone number is 571 272-1211. The examiner can normally be reached on Mon-Fri from 9 to 6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Johnson, can be reached on 571 272-1176. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

M. Vargot
July 7, 2008

/Mathieu D. Vargot/
Primary Examiner, Art Unit 1791